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*NOT ADMITTED TO THE NEW YORK BAR

May 6, 2016

By ECF

Honorable Anita B. Brody
United States District Court
Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street, Room 7613
Philadelphia PA, 19106

Smith, et al., v. Arizona Football Club, LLC, 16-cv-01704

Dear Judge Brody:

We write on behalf of the Arizona Cardinals Football Club, LLC (the “Cardinals”) concerning the motion to remand (the “Motion”) filed on April 19, 2016 by Plaintiffs in the above-captioned action pending in *In re National Football League Players’ Concussion Injury Litigation* (“MDL 2323”). For the reasons set forth below, the Motion is procedurally improper and premature. Accordingly, the Cardinals respectfully request that it be denied without prejudice at this time or, at the least, held in abeyance until the Court issues a case management order permitting and scheduling supplemental briefing on all or certain preemption-related motions in the Opt Out litigation.

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First, Plaintiffs already filed a motion to remand prior to MDL transfer that is pending before this Court. (See 4:15-cv-01903 (E.D. Mo), Doc. Nos. 16-17.) Filing a successive motion seeking the same relief as a motion that remains pending before the Court is improper. *See, e.g., UFCW Local 880-Retail Food Emp's Joint Pension Fund v. Newmont Mining Corp.*, 2007 WL 2871013, at *5 (D. Colo. Sept. 26, 2007) (“[Proposed intervenor] proffers no explanation as to why it had a good faith legal basis to file repetitive motions seeking the same relief that remained *sub judice* as a result of its first request for entry of default.”), *aff'd*, 276 F. App'x 747 (10th Cir. 2008); *see also Scott v. Cunningham*, 2012 WL 1536312, at *8 (W.D. Wash. Apr. 12, 2012) (“[T]he case represents an example of abusive pleading practice where multiple motions are filed asking for the same relief and the plaintiff does not wait for a response from the court before filing the same motion again. Motion practice of this nature cannot be for a proper purpose and only delays and increases the cost of litigation.”), *aff'd*, 516 F. App'x 672 (9th Cir. 2013). Here, Plaintiffs do not contest—nor could they—that their motion to remand was pending at the time they filed the Motion. The already pending motion argues that the actions should be remanded to state court because there is no federal jurisdiction on the basis of Section 301 Labor Management Relations Act preemption—the same argument made in the instant Motion. Thus, the Motion should be denied without prejudice at the outset as duplicative of a pending motion.

Second, the Motion—filed by the same counsel who represent plaintiffs suing the Kansas City Chiefs in four substantially similar actions pending in MDL 2323—ignores that this Court issued an order in the Chiefs actions which requested that counsel *first* brief the issue of whether the Court should hear plaintiffs' remand motions before or at the same time that it hears the preemption issues raised in the NFL Defendants' motion to dismiss. (See 12-md-02323, Doc No. 6705.) The Court issued a notice which clarified that only *after* the Court decides the timing issue will the parties be required to brief the substance of the remand arguments. (See *id.*, Doc. No. 6710.) Instead of alerting the Court that Plaintiffs seek joinder of this action on that pending briefing, the Motion instead seeks to skip ahead to the substantive briefing and further uses its introduction as a sur-reply to argue why the Court should expedite its consideration of the Cardinals and Chiefs remand motions. Again, this is plainly improper.

Third, the Motion concedes that the transfer of Plaintiffs' action to MDL 2323 will promote the just and efficient conduct of the multidistrict litigation. (See Motion at 2 (“The United States Judicial Panel on Multidistrict Litigation, however, found that transfer of this action would likely promote the just and efficient conduct of the litigation. Upon further consideration, Plaintiffs agree.”).) By filing a new remand motion, however, Plaintiffs are interfering with this Court's effort to administer the MDL proceedings in an orderly fashion. It is incontestable that the Court has broad discretion to manage its docket in a fashion intended to maximize judicial efficiency and minimize burden on the parties. *See In re Asbestos Prods. Liab. Litig. (No. VI)*, 718 F.3d 236, 243 (3d Cir. 2013) (“[D]istrict judges ‘must have authority to manage their dockets, especially during a massive litigation’” (quoting *In re Fannie Mae Sec. Litig.*, 552 F.3d

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814, 822-23 (D.C. Cir. 2009)); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1232 (9th Cir. 2006) (stating that district courts managing multidistrict litigation cases need “to have broad discretion to administer the proceeding as a whole, which necessarily includes keeping the parts in line”). There is no reason for Plaintiffs’ motion to depart from coordinated management of the Court’s docket (including the Chiefs actions)—the very purpose of having an MDL.

To achieve those goals, as set forth in the Chiefs’ responsive briefing (12-md-02323, Doc. No. 6719), supplemental briefing on the motions to remand should be coordinated with supplemental briefing on the NFL Parties’ pending motion to dismiss the other cases pending before the Court in this MDL proceeding. As Plaintiffs’ Memorandum in Support of their Motion illustrates, both motions—despite involving different defendants—will require the Court to consider substantially overlapping arguments concerning provisions of the NFL Collective Bargaining Agreements and Section 301 Labor Management Relations Act case law. The coordination of supplemental briefing (and argument) on preemption-related motions would be consistent with the Court’s intent to prioritize and coordinate the resolution of related motions while maintaining structured, efficient MDL proceedings. It would also be consistent with the Court’s June 13, 2012 order that stayed “[t]he time for NFL Defendants and Riddell Defendants to respond to any motion to remand . . . until further order from this Court.” (Order at 1, 12-md-02323, Doc. No. 89.) By staying those responses, the Court recognized then that it would be inefficient to address preemption-related motion practice in piecemeal fashion. The same holds true for the instant Motion.

In sum, the Cardinals respectfully request that the Motion be denied without prejudice as procedurally improper at this time or held in abeyance until the Court issues a case management order permitting and scheduling supplemental briefing on all or certain preemption-related motions in the Opt Out litigation. At such time, the Cardinals respectfully request the right to submit an opposition brief on the merits of the motion on a briefing schedule agreed to by the parties or ordered by the Court.

Respectfully submitted,


Bruce Birenboim

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing document was served electronically via the Court's electronic filing system on the 6th day of May, 2016, upon all counsel of record.

Dated: May 6, 2016

/s/ Bruce Birenboim
Bruce Birenboim